

**UPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER**

Date: 06/19/2008 Time: 10:00:00 AM Dept: C-71
Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Kathleen Sandoval

Bailiff/Court Attendant: L. Wilks
ERM:
Reporter:

Case Init. Date: 06/19/1998

Case No: JCCP4041

Case Title: JCCP4041 COORDINATION PROCEEDING
TOBACCO LITIGATION

Case Category: Civil - Unlimited

Case Type: Misc Complaints - Other

Event Type: Motion Hearing (Civil)

Appearances:

The Court, having taken the above-entitled matter under submission on 06/13/2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on defendant R.J. Reynolds Tobacco Co.'s ("Defendant") motion for criminal jury trial or, alternatively, to strike Plaintiff's request for punitive monetary sanctions as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

The issue of the applicability of a jury trial to an enforcement action involving the MSA and Consent Decree at issue here was previously decided by this Court in *People ex rel Lockyer v. R.J. Reynolds* (hereafter "Lockyer"). In that case, this Court granted Defendant's motion to vacate the setting of a jury trial. In both that case and this one, Plaintiff People of the State of California ex rel. Edmund G. Brown, Jr., Attorney General of the State of California ("Plaintiff") is seeking both legal and equitable remedies. (Plaintiff's Notice of Lodgment, Exh. 5 and Notice of Amended Motion to Enforce the Consent Decree ("Enforcement Motion").) Here, Plaintiff seeks the equitable remedies of declaratory and injunctive relief. (Enforcement Motion, pp. 1-2.) More specifically, it asks the Court to declare that Defendant illegally used cartoons in its Farm Rocks campaign and to restrain Defendant from using cartoons in that campaign or in any other campaign in the future. (Ibid.) As in Lockyer, Plaintiff also seeks monetary sanctions. As was stated in the Court's ruling in Lockyer, the request for monetary sanctions does "not automatically entitle [Defendant] to a jury trial...." (Ibid.) Furthermore, where, as here, the basis for the request for monetary sanctions and equitable issues is the alleged misconduct by Defendant, the request for monetary sanctions cannot be severed from the equitable issues. (Ibid.)

As to Defendant's alternative request to strike the request for monetary sanctions, what is at issue is an enforcement action. Through the Consent Decree, the Court retains jurisdiction of the case and allows Plaintiff "to apply to the Court at any time for further orders or directions as may be necessary or

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appropriate for the implementation and enforcement of this Consent Decree and Final Judgment." (Consent Decree, §VI.A.) The Consent Decree provides for cumulative remedies "in addition to any other remedies the State has at law or equity." (Id. at §VI.E.) Plaintiff may "seek an order for monetary, civil contempt or criminal sanctions for any claimed violation...." (Id. at §VI.A.) The Court has the discretion not to enter an order for any or all of the above noted remedies. (Ibid.) In the last motion, the Court determined that Plaintiff could proceed by motion to seek monetary sanctions. In this motion, Defendant reiterates arguments that it made at the last hearing that the Court did not find persuasive for the application of the contempt statutes to this proceeding.

Based on the foregoing, the motion is denied. By this ruling, the Court is not foreclosing Defendant from arguing that monetary sanctions are not appropriate at the time of trial. As noted above, the Consent Decree provides the Court with the discretion not to order such a remedy.

IT IS SO ORDERED.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

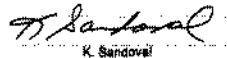
CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:

JCCP4041

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 06/20/2008.

Clerk of the Court, by:


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CLERK'S CERTIFICATE OF SERVICE BY MAIL

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